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Counsel to Imerys Filtration Minerals, Inc. f/k/a Imerys Minerals California, Inc.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☒ Affects Both Debtors
☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company

Case No. 19-30088 (DM) (Lead Case)

Chapter 11
(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION
OF RIGHTS OF IMERYS FILTRATION
MINERALS, INC. F/K/A IMERYS
MINERALS CALIFORNIA, INC. TO (I)
NOTICE OF FILING OF PLAN
SUPPLEMENT IN CONNECTION WITH
DEBTORS' AND SHAREHOLDER
PROONENTS' JOINT CHAPTER 11 PLAN
OF REORGANIZATION DATED MARCH 16,
2020 AND (II) ASSUMPTION OF
PURPORTED IMERYS AGREEMENT AND
CURE CLAIM**

Hearing

Date: May 27, 2020
Time: 10:00 a.m. (Pacific Time)
Before: Hon. Dennis Montali
United States Bankruptcy Court
Courtroom 17, 16th Floor
450 Golden Gate Avenue
San Francisco, California 94102

Objection Deadline

Date: May 15, 2020
Time: 4:00 p.m. (Pacific Time)

28565/3

05/15/2020 206425017.1

1 Imerys Filtration Minerals, Inc. f/k/a Imerys Mineral California, Inc. (“Imerys”)
2 hereby files its limited objection and reservation of rights (the “Limited Objection”)¹ to the
3 *Notice of Filing of Plan Supplement in Connection with Debtors’ And Shareholder*
4 *Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020* [Dkt. No.
5 7037](the “Plan Supplement”). In support of this Limited Objection, Imerys respectfully
6 represents as follows:

7
8 **Limited Objection**

9 1. Imerys filed proof of claim number 59221 (the “POC”) on October 19,
10 2019 in the aggregate amount of \$968,451.00. The POC was broken down into two
11 components. First, a secured claim in the amount of \$404,423.70 on account certain pre-
12 petition set off rights in favor of Imerys. Second, a general unsecured claim in the amount of
13 \$564,027.30.

14 2. On March 16, 2020, the Debtors filed the *Amended Chapter 11 Plan*
15 *Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March*
16 *16, 2020* [Dkt. No. 6320](the “Plan”).

17 3. On April 29, 2020, this Court entered an *Order Approving Stipulation*
18 *For Adequate protection of Setoff Rights of Imerys Filtration Minerals, Inc.* (the “Setoff
19 Order”) [Dkt. No. 6996]. The Setoff Order recognized that Imerys was entitled to adequate
20 protection in the form of the recognition of its setoff rights in connection with the secured
21 portion of the POC.

22 4. Pursuant to Article 8.1(a) of the Plan, upon the Plan becoming effective
23 and payment of any applicable Cure Amount (as defined in the Plan), certain executory
24

25 ¹ Counsel for Imerys attempted to obtain an extension of the deadline to respond to the Plan Supplement, but counsel for the Debtors advised that they were not granting extensions.

contracts are deemed to be automatically assumed. In addition, under Article 8.2(e) of the Plan, any proofs of Claim (as defined in the Plan) in connection with an executory contract that has been assumed are deemed to be disallowed and expunged.

5. On May 1, 2020, the Debtors filed the Plan Supplement. Exhibit B to the Plan Supplement included a “Schedule of Executory Contracts and Unexpired Leases to be Assumed” (the “Assumed Contract Schedule”). The Assumed Contract Schedule included the following reference to a purported contract with Imerys (the “Alleged Imerys Contract”):

Non-Debtor Counterparty Name	Match ID	Contract ID	Debtor Name	Address	City	State	Country	ZIP Code	Title of Agreement	Effective Date of Agreement	Cure Amount
IMERYS MINERALS CALIFORNIA INC	1020201	CCOTH_03272	PACIFIC GAS AND ELECTRIC COMPANY	PO BOX 519	LOMPOC	CA	US	93438	INDUSTRIAL CALCULATED INCENTIVES - CUSTOMIZED INCENTIVE PROGRAM	7/23/18	-

6. To date, and despite Imerys’ best efforts, Imerys has been unable to identify: (i) whether the Alleged Imerys Contract in fact exists, (ii) whether there are other contracts between Imerys and the Debtors not reflected in the Plan Supplement, and (iii) if the Alleged Imerys Contract does exist, whether the claim Imerys asserts in the POC is, in any way, related to the Alleged Imerys Contract. If the claim Imerys asserts in the POC is related to the Alleged Imerys Contract, Imerys objects to the \$0 cure amount and asserts the Cure Amount should be the full amount asserted in the POC. As indicated previously, Imerys has reached out to Debtors’ counsel to obtain an extension of the objection deadline of May 15, 2020, but counsel advised no extensions were being granted.

7. Accordingly, as it is not clear whether the Alleged Imerys Contract has any relationship with Imerys’ claim set forth in the POC which gives rise to Imerys’ set off rights and with the agreements covered by the POC and Setoff Order, Imerys requests that the Debtors provide additional information about the Alleged Imerys Contract in advance of any confirmation order being entered to ensure that Imerys’ set off rights in the POC are not

1 adversely impacted by entry of any confirmation order. To the extent that the Alleged Imerys
2 Contract does have any relationship to the claims Imerys asserts in the POC and Imerys'
3 setoff rights, Imerys files this objection to the assumption of the Alleged Imerys Contract and
4 to the \$0 cure amount assigned to the Alleged Imerys Contract provided in the Plan
5 Supplement to preserve such rights, and Imerys asserts a cure claim in the amount of the
6 POC.

7 **RESERVATION OF RIGHTS**

8 8. This Limited Objection is filed with a full reservation of rights,
9 including the right to supplement, modify or amend this Limited Objection, incorporate
10 objections filed by other parties in interest in a subsequent joinder filed with this Court, and/or
11 make such other and further objections to the assumption or assumption and assignment of the
12 agreement(s) referenced herein (including cure amounts) until such time as a final order is
13 entered approving the cure costs with respect to the agreement(s). In addition, to the extent
14 that the cure amounts requested herein are not timely paid or other non-monetary cure
15 obligations are not timely fulfilled, Imerys reserves all of its respective rights. Nothing set
16 forth herein shall constitute a waiver, discharge or disallowance of any and all rights, claims,
17 causes of action and defenses. In addition, nothing set forth herein shall be construed as a
18 waiver, release, discharge or disallowance of any and all claims Imerys has against any of the
19 Debtors.
20

21 **CONCLUSION**

22 9. Based on the foregoing, the confirmation order should not be entered
23 unless the aforementioned concerns raised by Imerys herein are addressed.
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2 Dated: May 15, 2020.

3 **LAW OFFICES OF MIRIAM HISER**

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10 -and-

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